IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH.

Civil Revision 827 of 2008.
Date of Decision: 11th February, 2008.

Babu Deen ....Petitioner
through
Mr. BBS Sobti, Advocate

Versus

Nirmal Singh & Ors.
...Respondents

CORAM:

HONBLE MR. JUSTICE SURYA KANT.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

SURYA KANT,J.(ORAL)

This revision petition is directed against the order dated 14th December, 2007 whereby an application under Order 6 Rule 17 CPC for amendment of the plaint, has been dismissed.

The petitioner claims to have purchased the suit property vide sale deed dated 9.7.1993. Much prior thereto, a money decree had been passed against the vendor and the decree-holder had already taken steps to get the suit land attached. It appears that in the execution proceedings which were filed on 11.1.1992, the suit land was attached and auctioned. Even the sale certificate had also been issued. The petitioner now wants to seek amendment of his suit so as to seek a declaration for setting aside of the said sale certificate as well.

In the facts and circumstances of the case, when the sale deed executed in favour of the petitioner appears to be an attempt to defeat the legitimate rights of the decree holder, the learned trial Court has committed no error of law in declining the proposed amendment.

Learned counsel for the petitioner, however, places

reliance upon a judgment of the Andhra Pradesh High Court in ***Bhagavathula Kameswara Rao v Doddaku Veera Raghavulu & Anr.***,**AIR 1960 Andhra Pradesh, 616** to contend that where the sale deed has been executed prior to the issuance of the 'sale certificate' in the execution proceedings, such sale deed shall prevail over the sale-certificate. Similarly, he has also relied upon a judgment of the Bombay High Court in ***Basavanappa Bhimsha Koli @ Jamdar v Sunil Basavanappa Jidge, 2008(1) Civil Court Cases, 265*** wherein it was held that merits of the case should not be gone into by the trial court while dealing with an application for amendment of the pleadings.

Both the above-noticed contentions are factually incorrect and legally misconceived. The question of preference between the 'sale deed' executed in favour of the petitioner on the one hand and the 'sale certificate' issued by the Executing Court on the other hand, is yet to be gone into by the learned trial Court. So far as touching of the merits of the case is concerned, the learned trial Court has merely referred to the bare facts in order to suggest that the proposed amendment lacks *bona-fide* and apparently has been sought in collusion with the respondent-judgment debtor who is already proceeded *ex-parte* in the present suit.

For the reasons afore-stated, finding no ground to interfere with the impugned order, this revision petition is dismissed.

February 11, 2008. ***(SURYA KANT)***
dinesh ***JUDGE***